REMARKS

Entry of the present amendment for allowance or appeal is requested.

Counsel wishes to thank the Examiner for courtesy extended in telephone discussion regarding this application. At the time, counsel pointed out to the Examiner that claim 1, as presented, did in fact distinguish from fluorescent or enzyme labels by virtue of the language appearing at the end of the claim, i.e. the displaceable moiety cannot generate the signal in the assay unless and until the displaceable moiety is captured on the second surface. In any case, it is proposed herein to amend this portion of claim 1 to highlight this distinctive feature of the applicants' invention.

Claim 12 has also been amended to obviate the Examiner's Section 112, 2nd ¶ rejection thereof. However, the applicants request the Examiner to reconsider the objection to the language "the displaceable moiety for the analyte" in claim 1 for lack of antecedent support. The displaceable moiety referred to is identified earlier in the claim. See line 3 thereof. Accordingly, reconsideration of this aspect of the Examiner's Section 112 rejection is requested.

The Examiner is also requested to reconsider the Section 102(b) rejection of claims 1-3, 7-10 and 13-16 as anticipated by Schramm et al. Similarly, the Examiner is requested to reconsider the Section 103(a) rejections of claims based on Schramm et al or Garland et al in view of Tom-Moy et al. The applicants' invention is not disclosed by Schramm et al or suggested by any consideration of Schramm et al and Garland et al even if these references are considered with Tom-Moy et al when there is no motivation in the art to consider these references together.

The Examiner's rejections on Schramm et al are based on the erroneous view that the applicants do not exclude fluorescent or enzyme labels to provide the signal "regardless of where the displaceable moiety is located within the assay". However, applicants' claim 1 as previously presented and as now amended indicates that, in the applicants' assay, the detectable signal is not generated unless and until the displaceable moiety is captured on the second surface. This is a clear distinction from Schramm et al who use fluorescent or enzyme labels that inherently give signals regardless of where the displaceable moiety is located.

In view of the foregoing, it is submitted that applicants' claims are not in any sense anticipated by Schramm et al. Furthermore, the applicants' claims are not obvious from a consideration of Schramm et al with Tom-Moy as the latter does not fill in the fundamental deficiencies of Schramm et al.

The foregoing comments are equally applicable against the Examiner's combination of Garland et al and Tom-Moy. Clearly, Garland et al do not show an assay wherein the detectable signal is not generated unless and until the displaceable moiety is captured on the second surface. It is further noted that applicants' claim 1 expressly excludes Surface Plasmon Resonance as the detection means, this being an essential feature for detection in Garland's assay. As with Schramm, Tom-Moy does not fill in the deficiencies of Garland.

It is noted that, in rejecting the claims, the Examiner has referred to the claim language as "open". However, the claim language is really "closed" in the sense that it clearly and unequivocally excludes what is disclosed by the references or obvious therefrom.

Favorable reconsideration of this application is requested.

Respectfully submitted,

PILLSBURY WINTHROP LLP

By_____
Paul N. Kokulis
Reg. No. 16773

PNK:mh
1600 Tysons Boulevard
McLean, Virginia 22102
Phone: (703) 905-2118

APPENDIX

Version with Markings to Show Changes Made

IN THE CLAIMS

The claims are amended as follows:

1. (Twice Amended) A method of detecting the presence of an analyte of interest in a sample, the method comprising the steps of: providing a first surface having reversibly immobilised thereon a displaceable moiety, the displaceable moiety being immobilised on the first surface with an affinity lower than that of the displaceable moiety for the analyte of interest; exposing the first surface to a sample comprising the analyte of interest, the analyte of interest specifically displacing the displaceable moiety from the first surface; causing the displaceable moiety displaced from the first surface to contact a second surface bearing a capture moiety which specifically binds to the displaceable moiety, so as to capture the displaceable moiety on the second surface, said capture generating a detectable signal; and detecting the signal; wherein said detection is performed by means other than Surface Plasmon Resonance, and wherein the [displaceable moiety cannot generate the] detectable signal [which is detected in the assay] is not generated unless and until the displaceable moiety is captured on the second surface whereupon said signal indicating detection of the analyte in said assay is generated.

12. (Twice Amended) A method according to claim 1, wherein capture of the displaceable moiety by the capture moiety directly modulates the

[electrochemical properties] electrochemistry of the capture moiety, which modulation comprises the detectable signal.